**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION.**

**CRIMINAL APPEAL NO. 820 OF 2000**

Maruti Dhondiba Waghmare ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

.....

none for the appellant- accused though appointed.
Mrs. P.H.Kantharia APP for the State.

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**CORAM ; V.G.PALSHIKAR &**
**ANOOP V. MOHTA, JJ.**

**DATED; 24TH SEPTEMBER, 2004.**

**ORAL JUDGMENT ( Per Palshikar, J.);**

1. Being aggrieved by the the order of conviction passed by the Additional Sessions Judge, Pune in Sessions Case No. 201 of 1999 under sections 302 of IPC on 17-2-2000 the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also orally canvassed before us.

2. With the assistance of the learned Prosecutor, we have scrutinised the records of the case and re-appreciated the evidence on record.

3. The prosecution story as emerges from our reappreciation of the evidence stated briefly is that the complainant Shantabai was the wife of accused. Both were the residents of village Nesawe, Taluka Maval. On 10-5-1994 Kisan Nanekar along with one Vishnu left the house for giving wedding cards to their relatives. While they were passing nearby Kamal Mala of village Khandshi through a forest they heard commotion of a lady. Both of them went near that lady and enquired with her as to what happened. The lady told her name as Shantabai and told that she was assaulted by her husband and requested them to give information to her brother Baban. Accordingly Baban was informed and Baban along with police Patil came to Shantabai and police patil then lodged complaint with the police. Police on receipt of the information conducted investigation and arrested the accused. Prosecution has examined in all five witnesses to prove its charge against the accused and the learned trial Judge on appreciation of the evidence came to the conclusion of guilt and convicted the accused as aforesaid. It is this order which is challenged in this appeal.

4. P.w.1 is Soga Gopala Rane who is the police patil who on receiving the information went to the spot and

identified body of Shantabai and gave report to the police. P.w.2 Deoram is the panch witness to the panchanama of the seizure of articles from the spot.

5. P.w.3 is Kisan who is the eye witness who states that he along with one Vishnu while going through a small forest towards Umbarwadi he heard commotion of a lady. They went to her and saw Shantabai was lying on the ground smeared with blood. On enquiry she told that she was beaten by her husband and also asked them to inform her brother Baban. Accordingly Baban was informed. This witness stated in the cross examination that police recorded his statement. He also stated to the police that they heard the commotion of the lady. But he cannot tell the reason how it is not appearing in his statement. He also stated that he do not know the accused.

6. P.w.4 is the doctor who conducted the post marum. P.w.5 is the P.I. Malegaon who conducted the investigation.

7. There are discripencies in the evidence and except for the solitary statement by one witness i.e. P.w.3 that the injured woman told them that she was beaten by her husband, there is no other evidence whatsoever to

connect the accused with the murder. This witness even does not remember the name of the husband as was told to them by the witness. He does not go to the police nor does he did nothing to help the victim. It is highly improbable therefore that he is really a witness of anything.

8. Hence there is no evidence whatsoever to connect the accused with the crime. Therefore the learned trial Judge has erred in coming to the conclusion of guilt and convict the accused. In the result the appeal succeeds and is allowed. The judgment and order of conviction is set aside. The accused is acquitted and he be released forthwith if not required otherwise.

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